

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on July 10, 2008. No fee is due in connection with this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-462 on the account statement.

Claims 17-59 are pending in this application. Claims 17-55 were previously withdrawn. Claims 1-16 were previously canceled. In the Office Action, Claim 56 is rejected under 35 U.S.C. §103 and Claims 57-59 are rejected under 35 U.S.C. §102. In response, Claims 56-59 have been amended. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 57-59 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,306,442 to Sunvold et al. ("*Sunvold*"). In view of the claim amendments and/or for at least the reasons set forth below, Applicants respectfully disagree and request that the rejection be withdrawn.

Currently amended independent Claims 57-59 recite, in part, pet foods comprising supplemental amounts of lysine and cysteine in amounts sufficient to maintain muscle mass in a senior feline, the lysine comprising from about 6.7% to about 12.5% by weight of the dietary protein level of the pet food and the cysteine comprising from about 1.67% to about 2.68% by weight of the dietary protein level of the pet food. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 4, [0016]; page 8, [0031]-[0032]. Applicants have surprisingly found that by feeding a senior feline a pet food having a supplemental amount of lysine and cysteine enables the feline to have an effective lean body mass protection equivalent to or substantially equivalent to the lean body mass protection provided to a cat that consumes a 50% protein feline food diet or ration. It is the cat's biochemical system that produces the enhanced effective lean body mass protection *in situ* from digestion of the supplemental lysine or cysteine. See, specification, page 4, [0016]. In contrast, Applicants respectfully submit that *Sunvold* fails to disclose each and every element of the present claims.

For example, *Sunvold* fails to disclose or suggest pet foods comprising supplemental amounts of lysine and cysteine in amounts sufficient to maintain muscle mass in a senior feline, the lysine comprising from about 6.7% to about 12.5% by weight of the dietary protein level of the pet food and the cysteine comprising from about 1.67% to about 2.68% by weight of the dietary protein level of the pet food. Instead, *Sunvold* is entirely directed toward a pet food which improves clinical indicators in renal patients and includes adequate protein, has low phosphorus levels, improves metabolic buffering, and lowers blood triglyceride levels in the animal. See, *Sunvold*, Abstract. However, at no place in the disclosure does *Sunvold* even mention the possibility of adding supplemental amounts of cysteine to the compositions. Moreover, *Sunvold* fails to disclose or even suggest Applicants claimed ranges of the lysine and/or the cysteine. As such, Applicants respectfully submit that *Sunvold* fails to disclose each and every element of independent Claims 57-59 and, therefore, fails to render the present claims anticipated.

Accordingly, Applicants respectfully request that the anticipation rejections with respect to Claims 57-59 be reconsidered and the rejections be withdrawn.

In the Office Action, Claim 56 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,267,195 to Boudreau et al. ("*Boudreau*"). In view of the claim amendments and/or for at least the reasons set forth below, Applicants respectfully disagree and request that the rejection be withdrawn.

Currently amended independent Claim 56 recites, in part, a pet food comprising supplemental amounts of lysine and cysteine in amounts effective to maintain lean body mass protection equivalent to a pet food containing a second dietary level of protein which is higher than the first dietary level of protein, the lysine comprising from about 2.7% to about 3.1% by weight of the pet food and the cysteine comprising from about 0.50% to about 0.75% by weight of the pet food. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 4, [0016]; page 8, [0031]-[0032]. In contrast, *Boudreau* is directed primarily toward dog food flavors and dog foods having increased palatability due to the flavors. See, *Boudreau*, Background. *Boudreau*, however, fails to disclose or even suggest the percentages of lysine or cysteine required, in part, by Claim 56.

For example, the Patent Office asserts that it "takes the whole dog food to include the water as part of the food, the gravy portion. The 1-3% of dry cysteine is therefore the amount

one of ordinary skill would add if mixing with the whole food.” See, Office Action, page 2, lines 13-17. However, Applicants respectfully submit that this is a tortured interpretation of the clear language of *Boudreau*.

For example, *Boudreau* specifically describes a dog food flavor composition that is desirably coated on the outside of a solid dog food and applied in a manner which allows their release into any water used for hydration. See, *Boudreau*, col. 2, lines 37-41. Similarly, *Boudreau* specifies that effective levels of cysteine in the dog food comprise 1% and 3% by weight of the dry weight of the dog food in the case where a 100 gram sample of the dry dog food is fed to the dog in combination with 150 grams of warm water. See, *Boudreau*, col. 3, lines 7-13. Specifically, the portion of *Boudreau* that discusses the amount of cysteine contained in the compositions reads as follows:

[e]ffective levels in this case, where a 100 gram sample of the food was fed with 150 grams of warm water, were 1% and 3% by weight of the dry weight of the dog food for L-cysteine . . . [t]est[s] employing, on the same basis, 3% ATP, 1% and 3% L-proline, and 1% L-lysine did not show palatability boosts over the highly flavorful control.

See, *Boudreau*, col. 3, lines 7-16 (emphasis added). Because the effective level of cysteine comprises 1% and 3% for the 100 gram sample of dry weight of the dog food, *Boudreau* cannot disclose cysteine comprising from about 0.50% to about 0.75% by weight of the pet food. Applicants respectfully submit that the Patent Office cannot simply ignore the explicit disclosure and definitions provided by *Boudreau*. This is especially true where *Boudreau* has already explicitly defined its pet food as having 1% and 3% L-cysteine by weight of the dry weight of the dog food. As has been recognized time and again by the Federal Circuit, it is axiomatic that the Applicants’ definition of a term controls how that term is interpreted. In this case, *Boudreau* has defined the 1% and 3% L-cysteine as being part of a dry dog food.

Applicants respectfully disagree with the Patent Office’s suggestion that the amount of cysteine disclosed in *Boudreau* can be based on anything other than the “dry weight of the dog food,” which is explicitly recited in the third column of *Boudreau*, as demonstrated above. In contrast, Applicants respectfully submit that the reference does not disclose that the amount of cysteine present in the composition may be based on a wet dog food. In fact, the reference specifically

states that effective levels of cysteine include “1% and 3% by weight of the dry weight of the dog food,” as is demonstrated above. See, *Boudreau*, column 3, lines 7-10. As such, Applicants respectfully submit that the Patent Office cannot interpret “dry” to mean “wet or dry dog food” when the applied reference specifically indicates that the cysteine levels correspond only to the “dry weight” of the dog food. Similarly, the percentages of cysteine contained in *Boudreau* cannot be read as applying to a dog food comprising 100g of dry dog food and 150g of warm water when the reference specifically states that the percentages of cysteine specifically apply solely to the 100g of dry dog food. Therefore, at best, *Boudreau* discloses 1% and 3% cysteine of 100g of dry dog food, in contrast to the cysteine comprising from about 0.50% to about 0.75% by weight of the pet food as required, in part, by independent Claim 56.

Moreover, *Bourdeau* fails to disclose or even suggest lysine comprising from about 2.7% to about 3.1% by weight of the pet food as required, in part, by independent Claim 56. Although the Patent Office cites Reexamined claim 11 of *Boudreau* as disclosing 0.1-500 mM of lysine, Applicants respectfully submit that *Boudreau* still fails to disclose or suggest lysine comprising about 2.7% to about 3.1% by weight of the pet food as is required, in part, by Claim 56. As a preliminary matter, Applicants respectfully submit that Reexamined claim 11 of *Boudreau* fails to disclose or even mention any amounts of L-lysine present in the dog food. See, *Boudreau*, Reexamined claim 11. Instead, Applicants respectfully submit that the only mention of any levels of L-lysine are found in Reexamined claims 2 and 14. However, the disclosed levels of 0.1 to 500 mM of L-lysine are said to be employed in an aqueous gravy. Instead of disclosing a percentage of L-lysine contained in the present food composition, *Boudreau* only discloses molar amounts of lysine, which are measures of the concentration of a solution (measured as moles of solute per litre of solution and having units of mol dm^{-3}) and are completely distinguishable from the presently claimed percentages. As such, Applicants respectfully submit that *Boudreau* fails to disclose lysine comprising about 2.7% to about 3.1% by weight of the pet food as required, in part, by independent Claim 56.

Further, *Boudreau* even teaches away from the present claims by teaching that 1% of L-lysine was not efficient to show palatability boosts, as was mentioned above. Because *Boudreau* fails to disclose or suggest any amount over 1% L-lysine, and even teaches away from using the 1% of L-lysine, *Boudreau* cannot disclose lysine comprising about 2.7% to about 3.1% by weight of the pet food. For at least the above-mentioned reasons, Applicants respectfully submit

that *Boudreau* fails to disclose each and every element of independent Claim 56 and, therefore, fails to render the present claims obvious.

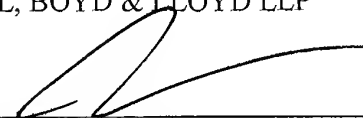
Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claim 56 be reconsidered and the rejections be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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